



ELECTION AND DISCLOSURE OBLIGATIONS FOR BROADCASTERS AND PUBLISHERS

FOR STATE ELECTIONS AND BY-ELECTIONS

Handbook 5

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1. Introduction

This handbook is issued by the Electoral Commission of Queensland (ECQ) to assist broadcasters and publishers understand and comply with their disclosure and reporting obligations pursuant to the *Electoral Act 1992* (the Act) and the *Electoral Regulation 2013* (the Regulation). In providing this information, the ECQ seeks to ensure the integrity of Queensland's electoral processes, and ensure electoral participants have adequate information to enable them to comply with their legislated obligations and responsibilities.

Broadcasters and publishers have obligations and limitations under the Act. Broadcasters and Publishers must familiarise themselves with their obligations. Lack of awareness of the requirements of the Act is not an acceptable excuse for non-compliance.

Under the Act, there are requirements for broadcasters and publishers related to reporting and compliance, which ensure transparency and fairness in the electoral process. All disclosure returns required to be given to the ECQ can be lodged through the Electronic Disclosure System (EDS), which can be accessed at www.disclosures.ecq.qld.gov.au.

These regulations ensure transparency and fairness in the election process. The ECQ can undertake a range of compliance and enforcement actions, including reviews and audits, issuing penalty infringement notices, recovery of amounts as debts due to the State and prosecution.

Disclaimer

ECQ publications are not legal advice nor are they intended as a substitute for the Act or the Regulation. The ECQ recommends that stakeholders seek independent legal advice in relation to their funding and disclosure obligations. The *Electoral Act 1992* and *Electoral Regulation 2013* are available on the Queensland legislation website: www.legislation.qld.gov.au.

The information in this handbook is based on legislation at the date of publication. If the legislation changes, an updated version of this handbook will be published on the Electoral Commission Queensland website. Broadcasters and publishers should regularly check the website for changes and updates. Current handbooks and forms are available on the ECQ's website: www.ecq.qld.gov.au.

Forms and publications referred to in this handbook can be downloaded from the ECQ website or requested from the ECQ on telephone 1300 881 665 or email fad@ecq.qld.gov.au.

How to use this handbook

This handbook consists of several parts and those persons responsible for broadcasting and publishing material related to election campaigns should familiarise themselves with all sections of this handbook.

- Sections 1 and 2 provide an introduction, context for the electoral regulations affecting broadcasters and publishers and background on the ECQ.
- Section 3 provides definitions and an overview for broadcasters and publishers.
- Section 4 gives detailed information about disclosure obligations, including how to lodge disclosures.
- Section 5 provides information about Queensland's prohibited donor legislation.
- Sections 6 and 7 outline record keeping obligations, audit, monitoring and compliance activities undertaken by the ECQ and offences and penalties associated with non-compliance.
- Sections 8 and 9 provide information about where to seek additional detail and how to contact the ECQ for assistance.

Broadcasters and publishers should familiarise themselves with all sections of the handbook. Broadcasters and publishers may also wish to regularly refer to this handbook to ensure all election and disclosure obligations are met.

2. Background

The role of the Electoral Commission Queensland

The Electoral Commission of Queensland (ECQ) is established under the *Electoral Act 1992* as an independent statutory authority, responsible for the impartial conduct of Queensland elections.

The ECQ's key functions are:

- conducting state, local and industrial elections and referendums;
- reviewing state and local electoral boundaries; and
- regulating and promoting compliance with electoral funding and disclosure requirements.

The core objectives of the disclosure provisions in the Act and Regulation are to ensure the integrity and transparency of Queensland's elections by requiring that participants in the electoral process fulfil a range of disclosure and reporting obligations.

The ECQ manages the Electronic Disclosure System (EDS), conducts learning support and training activities to stakeholders to promote awareness of electoral regulations and conducts compliance activities and proportionate enforcement activities.

The role of the writ

The ECQ is required to conduct an election when the Governor or Speaker of the Legislative Assembly issues a writ for an election. The writ will set out the dates on which key election events will take place, including the polling day, and the cut-off day for the nomination of candidates for the election. The ECQ will publish the details contained in the writ in the Government gazette and on its website.

3. Overview of broadcasters and publishers

Broadcasters and publishers are required, under sections 284 and 285 of the Electoral Act 1992, to provide the ECQ with a summary after the election of all election campaign advertising that was broadcast or published on their platform within a designated election period (known as the capped expenditure period). Details of each advertisement must be provided. A copy of the advertisement must be kept on record for a period of 5 years after the record is made and made available to the ECQ on request.

What is a broadcaster?

The Act defines a broadcaster for Queensland electoral purposes as:

- the Australian Broadcasting Corporation established under the *Australian Broadcasting Corporation Act 1983 (Cwlth)*; or
- the Special Broadcasting Service Corporation established under the *Special Broadcasting Service Act 1991 (Cwlth)*, section 5; or
- the holder of a licence under the *Broadcasting Services Act 1992 (Cwlth)*; or
- the provider of a broadcasting service under a class licence under the *Broadcasting Services Act 1992 (Cwlth)*.

What is a publisher?

A publisher is anyone who publishes a journal carrying an advertisement relating to a Queensland election is required to give the ECQ a return for the election. This includes publishers who are located outside Queensland.

The *Electoral Act 1992* gives a meaning for the word journal as a newspaper, magazine or other periodical, whether published for sale or for distribution without charge; however, it leaves the words publish and publisher to be understood in the common usage of the English language. Publishing traditionally relates to printed works, but it is recognised that the term now also includes electronic formats as well as the traditional forms.

Election blackout period

Under Commonwealth electoral laws,¹ advertising for State election campaigns cannot be broadcast from the end of the Wednesday before polling day until the close of the poll on polling day.

This rule applies only to broadcasters (online services and print media can still publish ads during the blackout period) and applies to general elections and by-elections for all state, territory and federal elections in Australia. It does not apply to local government elections.

Refer to the Australian Communications and Media Authority (www.acma.gov.au) for further information regarding these and other regulations that may apply to election advertising.

¹ Schedule 2, section 3A of the *Broadcasting Services Act 1992 (Cwlth)*.

4. Disclosure obligations

The Act requires that disclosure returns are lodged with the ECQ by those involved in State election campaigns, including candidates, registered political parties, associated entities, third party campaigners, broadcasters and publishers.

Disclosure of the publishing and broadcasting of political advertising and election material during a capped expenditure period ensures transparency and fairness in State elections and by-elections.

Who must lodge a return?

Under the disclosure laws, a 'return' is required from broadcasters and publishers who broadcast or published an advertisement relating to an election:

- with the authority of a participant in the election; and
- during the capped expenditure period for the election.

A participant in an election includes a candidate, registered political party, registered third party (as per the Register of Third Parties available on the ECQ website), or another third party that incurs electoral expenditure.

This includes broadcasters and publishers in Queensland, as well as those outside Queensland.

What is the reporting period?

The reporting period for publishers and broadcasters aligns with the capped expenditure period for an election. Broadcasters and publishers must report all election advertising within the capped expenditure period for the election in their return to the ECQ.

For a State general election, the capped expenditure period generally starts on the next business day after the last Saturday in March and ends at 6pm on the polling day for the election.

For the 2020 State General Election, the capped expenditure period is 1 August 2020 until 6pm on 31 October 2020.

For a State by-election, the capped expenditure period commences on the day the writ for the election is issued and ends at 6pm on the polling day for the election.

When does a return need to be lodged?

Broadcasters and publishers are required to lodge their disclosure return with the ECQ **within eight weeks after election day**.

Should two elections be held on the same day, one combined return may be lodged by the broadcaster or publisher containing details of advertisements relating to both election events.

A publisher of a newspaper, magazine or periodical is not required to give a return if the total amount of the charge invoiced by the publisher for the publication of an advertisement (and any other advertisement relating to an election that took place on the same day) does not exceed \$1,000 (under section 285(4) of the *Electoral Act 1992*).

A *nil return* is **not** required should a broadcaster or publisher have no disclosure returns to lodge with the ECQ.

How to lodge a disclosure return

All advertising related to the election should be included in the disclosure return lodged by broadcasters and publishers. It is not restricted to advertising that advocates a vote for or against a particular candidate or party. Advertisements raising awareness of issues without directly advocating for or against a candidate or party are considered election advertising.

Each broadcaster/publisher of an election advertisement must give the ECQ a return through the [Electronic Disclosure System](#) (EDS) stating:

- the type of publication or broadcasting service;
- the person at whose request the advertisement was broadcasted/published;
- the participant in the election who authorised the advertisement;
- dates, time and duration of broadcasts or the journal page and space; and
- whether a charge was made for broadcasting/publishing the advertisement, including the amount charged; and whether the amount charged was less than the normal commercial rate.

It is recommended that an Excel spreadsheet be used for record keeping for this information. A **template** for a bulk upload (in the format below) will be available in the [Help and Downloads](#) section of the EDS.

Template for broadcasters

Type	Radio or television station	Broadcast date	Broadcast time	Broadcast duration	Who requested broadcast	Who authorised broadcast	Amount	Commercial rate charged?

Template for publishers

Type	Publication name or website	Publication date	Journal page and space	Who requested advertisement	Who authorised advertisement	Amount	Commercial rate charged?

Amending returns

The ECQ may amend a return to the extent necessary to correct a formal error or remove a formal defect. A broadcaster/publisher who gives the ECQ a return may request permission of the ECQ to make a specified amendment to the return to correct an error or omission. The request must be submitted to the ECQ through the EDS in such instances.

Late returns

Every effort should be made to give the ECQ a return by the due date. However, applications for extension of the due date may be granted. An extension application must set out in writing the reasons for the extension and be given to the ECQ before the due date for the return. Extension applications are considered on a case by case basis.

Audit certification

Disclosure returns by broadcasters or publishers for an election do **not** require certification by an auditor.

5. Record keeping

Broadcasters and publishers must keep a record of documentation relating to the ordering, authorisation, payment, delivery, printing, distribution, publishing or broadcasting of all election advertising and must keep a copy of the advertisement.

The records kept must contain:

- a description of the audience to which the advertisement or other material was distributed, published or broadcast; and
- other details about the advertisement or other material, or its distribution, publication or broadcast, required by regulation; and
- if the distribution, publication or broadcast relates to the election for an electoral district - the name of the electoral district.

These records may be kept in paper or electronic form.

Records must be kept for a period of 5 years from the day the record is made.

These records do not have to be provided to the ECQ unless requested as part of an audit or compliance review conducted by the ECQ.

Broadcasters and publishers are subject to penalties should they not comply with their record keeping obligations. The maximum penalty for non-compliance with record keeping requirements is 20 penalty units for each offence. (The value of one penalty unit is \$133.45 as of 01 July 2020).

6. Offences and penalties

The ECQ promotes voluntary compliance with funding and disclosure requirements. Penalties are prescribed for infringing funding and disclosure laws.

Under section 184 of the *Electoral Act 1992*, the proprietor of a newspaper is guilty of an offence, for example, if:

- an article, or a paragraph, containing electoral matter is printed in the newspaper; and
- either the insertion of the article or paragraph is or is to be paid for; or any reward or compensation, or promise of reward or compensation, is or is to be made for the insertion of the article or paragraph; and
- the proprietor does not cause the word ‘advertisement’ to be printed as a headline to the article or paragraph in letters not smaller than 10 point or long primer.

The maximum penalty for this offence is 10 penalty units in the case of an individual, or 40 penalty units in the case of a corporation. (The value of one penalty unit is \$133.45 as of 01 July 2020).

7. Help and support

Other handbooks in this series for State elections and by-elections:

- Handbook 1 - Guide for Candidates for State Elections
- Handbook 2 - Election and Disclosure Obligations for Candidates for State Elections
- Handbook 3 - Election and Disclosure Obligations for Registered Political Parties and Associated Entities for State Elections
- Handbook 4 - Election and Disclosure Obligations Handbook for Third Parties and Donors for State Elections
- Handbook 5 - Election and Disclosure Obligation Handbook for Broadcasters and Publishers for State Elections (this book).

ECQ handbooks, forms and fact sheets are available on the ECQ website
- <https://www.ecq.qld.gov.au/candidates-and-parties/handbooks-and-forms>.

For more information about Queensland elections, voting and electoral boundaries, refer to the Electoral Commission of Queensland website
- www.ecq.qld.gov.au.

8. Enquiries and contact details

The ECQ's Funding, Disclosure & Compliance Division is available for general guidance on funding and disclosure matters. Specific legal, financial or other professional advice cannot be given by ECQ officers.

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Telephone: 1300 881 665

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